

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DERRICK L. SMITH,

Plaintiff,

v.

BOB DICKMAN,

Defendant.

OPINION AND ORDER

12-cv-953-wmc

State inmate Derrick L. Smith has filed this civil action pursuant to 42 U.S.C. § 1983, concerning the conditions of his confinement at the Marathon County Jail. He has been granted leave to proceed *in forma pauperis* in this case and he has paid an initial, partial filing fee as required by the Prison Litigation Reform Act (PLRA), 28 U.S.C. § 1915(b)(1). Because he is incarcerated, the PLRA also requires the court to screen the complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915A. In addressing any *pro se* litigant's complaint, the court must read the allegations generously, reviewing them under "less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Even under this very lenient standard, Smith's request for leave to proceed must be denied for reasons set forth below.

FACTS

For purposes of this order, the court accepts all well-pled allegations as true and assumes the following probative facts.¹

The plaintiff, Derrick L. Smith, has a lengthy criminal record of convictions from Marathon County, Wisconsin, dating back to at least 1996. Smith turned himself in to the Marathon County Jail on June 5, 2012, after he was charged with several felony offenses in Marathon County Case No. 2012CF386.² Smith was also charged with violating the terms of his supervised release from a previous sentence of imprisonment. Following the revocation of his parole and return to state prison in October 2012, Smith was transferred from the Marathon County Jail to the Dodge Correctional Institution (“DCI”) of the Wisconsin Department of Corrections (“WDOC”). In February 2013, Smith was assigned to the Columbia Correctional Institution (“CCI”). On August 6, 2013, Smith was released from state prison on extended supervision. Because a detainer was pending against him from Marathon County, Smith returned to custody at the Marathon County Jail, where he is currently awaiting trial in Case No. 2012CF386.

In this case, Smith has filed suit under 42 U.S.C. § 1983 against Marathon County Jail Administrator Bob Dickman. Smith has been diagnosed with “anxiety, depression and

¹ The court has supplemented the sparse allegations in the complaint with dates and procedural information about plaintiff’s underlying criminal case from the electronic docket available at Wisconsin Circuit Court Access, <http://wcca.wicourts.gov> (last visited November 15, 2013). The court draws all other facts from the complaint in this case and several others filed recently by Smith, as well as any exhibits attached to his pleadings. *See* FED. R. CIV. P. 10(c); *see also* *Witzke v. Femal*, 376 F.3d 744, 749 (7th Cir. 2004) (explaining that documents attached to the complaint become part of the pleading, meaning that a court may consider those documents to determine whether plaintiff has stated a valid claim).

² Smith has been charged in that case with first-degree sexual assault with a dangerous weapon; substantial battery intending bodily harm; strangulation and suffocation (two counts); false imprisonment; and victim intimidation by use or attempted use of force. *See State v. Derrick L. Smith*, Marathon County Case No. 2012CF386.

insomnia.” Smith also suffers from an unspecified skin condition that requires him to shave. Noting that “Jail staff” has been aware of his mental health care needs since 2000, Smith contends that Jail Administrator Dickman refused to allow him to keep an appointment with his private therapist on an unspecified date. Smith contends further that “on many occasions” Dickman allowed jail personnel to place him in disciplinary segregation without “psychiatric monitoring,” which caused Smith’s mental health to “worsen.” Finally, Smith contends that he was only allowed to shave sporadically from June through October 2012, which caused his skin to “break out” and become “permanently scarred.”

OPINION

A complaint may be dismissed for failure to state a claim where the plaintiff alleges too little, failing to meet the minimal federal pleading requirements found in Rule 8 of the Federal Rules of Civil Procedure. Rule 8(a) requires a “‘short and plain statement of the claim’ sufficient to notify the defendants of the allegations against them and enable them to file an answer.” *Marshall v. Knight*, 445 F.3d 965, 968 (7th Cir. 2006). While it is not necessary for a plaintiff to plead specific facts, he must articulate “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements” are insufficient to establish a plausible claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2007) (citing *Twombly*, 550 U.S. at 555) (observing that courts “are not bound to accept as true a legal conclusion couched as a factual allegation”).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that (1) he was deprived of a right secured by the Constitution or laws of the United States; and (2) the deprivation was visited upon him by a person or persons acting under color of state law.

Buchanan-Moore v. County of Milwaukee, 570 F.3d 824, 827 (2009) (citing *Kramer v. Village of North Fond du Lac*, 384 F.3d 856, 861 (7th Cir. 2004)). To demonstrate liability under § 1983, a plaintiff must allege sufficient facts showing that an individual personally caused or participated in the alleged constitutional deprivation. See *Zimmerman v. Tribble*, 226 F.3d 568, 574 (7th Cir. 2000); *Walker v. Taylorville Correctional Ctr.*, 129 F.3d 410, 413 (7th Cir. 1997) (noting that “personal involvement” is required to support a claim under § 1983). Dismissal is proper “if the complaint fails to set forth ‘enough facts to state a claim to relief that is plausible on its face.’” *St. John’s United Church of Christ v. City of Chicago*, 502 F.3d 616, 625 (7th Cir. 2007) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

Liberally construed, Smith alleges that he was denied adequate treatment or exposed to conditions of confinement with deliberate indifference to a serious medical or mental health condition. However, the pending complaint is factually insufficient in several respects. As to his claim that he was denied leave to see his private therapist while in custody at the Jail, Smith does not say when this occurred, why or what harm resulted. Smith’s claim that he was placed in disciplinary confinement without psychiatric monitoring “on many occasions” is also not specific enough to give notice of his claim in light of Smith’s lengthy history of confinement in the Marathon County Jail. Moreover, other than pointing to Dickman’s supervisory role at the Jail, Smith does not allege facts showing that he had any personal involvement with the alleged violations. Although Smith also seems to take issue with policies implemented at the Jail regarding access to razors and the opportunity to keep outside appointments with private therapists, Smith does not allege that Dickman was personally aware of a problem but intentionally violated Smith’s rights. Thus, the proposed complaint does not meet the pleading standard found in Fed. R. Civ. P. 8(a), and will be

dismissed without prejudice for failure to state a claim.

Smith may file an amended complaint in this case to cure the deficiencies outlined above. To proceed, plaintiff must file an amended complaint within forty-five days of the date of this order. That proposed amended complaint must set forth a “short and plain statement” of his claims, *see* Fed. R. Civ. P. 8(a), including only those claims lodged in the original complaint. Any unrelated claims not pursued in this case must be brought in a separate action. If plaintiff submits an amended complaint in compliance with this order, the court will take that complaint under consideration for screening pursuant to 28 U.S.C. § 1915A. If plaintiff fails to submit an amended complaint as directed, then this case will be closed without further notice pursuant to Fed. R. Civ. P. 41(b).

ORDER

IT IS ORDERED that:

1. Plaintiff Derrick L. Smith’s request for leave to proceed is DENIED and his complaint is DISMISSED without prejudice for failure to state a claim.
2. To proceed, plaintiff must file an amended complaint **within forty-five days** of the date of this order. That proposed amended complaint must set forth a “short and plain statement” of the facts in support of his claims, *see* Fed. R. Civ. P. 8(a), limited to those claims listed in the original complaint.
3. If plaintiff submits an amended complaint in compliance with this order, the court will take that complaint under consideration for screening pursuant to 28 U.S.C. § 1915A. **If plaintiff fails to submit an amended complaint as directed within 45 days, then this case will be closed without further notice pursuant to Fed. R. Civ. P. 41(b).**

Entered this 25th day of November, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge